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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of ) MM Docket No. 01-281  
 ) RM-10287  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations ) **DOCKET FILE COPY ORIGINAL**  
(Washington and Watkinsville, Georgia) )

To: Chief, Mass Media Bureau  
Policy and Rules Division  
Allocations Branch

**COMMENTS OF**  
**SOUTHERN BROADCASTING COMPANIES, INC.**  
**ON NOTICE OF PROPOSED RULE MAKING**

**SOUTHERN BROADCASTING  
COMPANIES, INC.**

Gary S. Smithwick  
Its Attorney

**SMITHWICK & BELENDIUK, P.C.**

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No. of Copies rec'd 014  
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November 26, 2001

## SUMMARY OF PLEADING

In these Comments, Southern Broadcasting Companies, Inc. ("SBC") responds to the Commission's Notice of Proposed Rule Making, *Washington and Watkinsville, Georgia*, released October 5, 2001. SBC shows herein that the reallocation of Channel 261A from Washington to Watkinsville would result in a preferential arrangement of allotments since it would result in a first local service to the residents of Watkinsville.

SBC provides herein a showing (*Tuck* analysis) that Watkinsville is independent from the Athens-Clarke Urbanized Area. In light of this showing, the stations licensed to other communities within the Athens-Clarke Urbanized area should not be attributed to Watkinsville. Watkinsville warrants a first local service preference.

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**COMMENTS OF**  
**SOUTHERN BROADCASTING COMPANIES, INC.**  
**ON NOTICE OF PROPOSED RULE MAKING**

Southern Broadcasting Companies, Inc. ("SBC"), licensee<sup>1</sup> of WXKT(FM), Channel 261A, Washington, Georgia, by its attorneys, and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby respectfully files its Comments on the Commission's *Notice of Proposed Rule Making – Washington and Watkinsville, Georgia*, DA 01-2320, released October 5, 2001 ("NPRM"). Comments are due by November 26, 2001, so this pleading is timely filed. The *NPRM* proposes to amend the Table of Allotments (47 C. F. R. §73.202 (b)) to change the allotment of FM Channel 261A from Washington, Georgia, to Watkinsville, Georgia, with a concurrent modification of the license of WXKT(FM)(Facility ID No. 51120), to operate on Channel 261A at Watkinsville. SBC fully supports the proposal. In support whereof, the following is shown:

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<sup>1</sup> At the time SBC filed its petition for rule making in this proceeding, Cumulus Licensing Corp. ("Cumulus") was licensee of WXKT. On September 29, 2001, the Commission granted an application (File No. BALH-20010713AAO) for consent to assignment of license of WXKT to SBC. The application was consummated November 15, 2001.

### **Background**

SBC requests the Commission to delete Channel 261A from Washington and reallocate it to Watkinsville, Georgia, with a concurrent modification of the license of WXKT to operate on Channel 261A at Watkinsville. This change is permissible under Section 1.420(i) of the Rules since (1) the channel changes are mutually exclusive, and (2) the rule making does not deprive a community of an existing service representing its only local transmission service. See *Modification of FM and TV Authorizations (New Community of License)*, 4 FCC Rcd 4870 [66 RR 2d 877] (1989). SBC's proposal is consistent with the rules and Commission policies<sup>2</sup>.

### **Expression of Continuing Interest**

Except as noted herein, SBC incorporates by reference the information in its petition for rule making, and reiterates that if the Commission allots Channel 261A to Watkinsville, SBC will timely file an application for a minor change construction permit to operate WXKT at Watkinsville, and upon grant, will promptly construct and operate the facilities.<sup>3</sup>

### **Watkinsville, Georgia, Is Independent of Athens, Georgia**

The Commission (at *NPRM* ¶4) restated its policy that if a rule making proponent intends to move its authorized facility to a community that is adjacent to an urbanized area where 50 percent or more of the urbanized area would be covered by the proposed city grade (70 dBu) contour, the proponent must demonstrate that the intended city of license is sufficiently

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<sup>2</sup> Station WLOV(AM) will remain licensed to Washington.

The reallocation of WXKT from Washington to Watkinsville, Georgia, will result in the overlap of the principal community contours of other FM stations in which the principals of SBC currently have attributable interests. An appropriate showing of compliance with Section 73.3555 of the Rules will be made at the application stage.

independent of the central city to justify a first local service preference.<sup>4</sup> The Commission noted that, while Watkinsville is not located within an urbanized area, the proposed facility would cover 56.6 percent of the Athens, Georgia, Urbanized Area with a 70 dBu contour. Therefore, the Commission required SBC to provide additional information responsive to an analysis under *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). That information is provided herewith.

**(1) The Extent to which Residents of Watkinsville Work in Athens, Rather than Watkinsville.**

The Northeast Georgia Regional Development Center reports that as of the 1990 census, approximately 59% of the residents of Oconee County commuted to Clarke County (Athens). No more up-to-date figures are available, however, SBC believes that due to the dramatic growth of Oconee County and Watkinsville that the number of commuters to Clarke County has decreased in the past 10 years. New employers in Oconee County since 1990 include Lowe's, and Home Depot home improvement stores and Kroger and Publix grocery stores.

**(2) Watkinsville Has Its Own Newspaper that Covers the Community's Local Needs and Interests.**

Watkinsville has its own newspaper, the **Oconee Enterprise**, a weekly newspaper, which has been published since 1884.

**(3) Watkinsville Community Leaders and Residents Perceive Watkinsville as Being Separate from, the Athens Urbanized Area.**

Watkinsville, founded in 1806, is today the county seat of Oconee County, and according to the 2000 census has a population of 2,097. The city's 32.6% population increase from the 1990 census figures was among the largest in the state of Georgia and helped fuel a 39.2%

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<sup>4</sup> *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

increase in Oconee County's population of 24,526. The city's population is expected to continue to increase in the coming years, as new residents move into Watkinsville, and as city leaders continue to annex outlying parcels of property in unincorporated Oconee County.

There is no question that residents of Watkinsville perceive Watkinsville as being separate from the Athens Urbanized area. **Attachment 1** is a copy of statements signed by 12 persons who work or reside in Watkinsville attesting to this fact. Statements have been provided by the following persons:

Jim Luke<sup>5</sup>, Chairman, Oconee County Republican Party and owner, Luke Hardware;

Toby Hardigee, Mayor of Watkinsville, resides in Watkinsville;

Frank Christa<sup>6</sup>, President of Athens First Bank, Watkinsville;

Mike Griffith, President of Watkinsville-based Golden Pantry stores, resides in Watkinsville;

Shannon Adams<sup>7</sup>, Superintendent of Schools, Oconee County School District;

Melvin Davis, Chairman, Oconee County Commission, resides in Watkinsville;

Scott Berry<sup>8</sup>, Sheriff of Oconee County;

Russell Lee, President, Oconee County Chamber of Commerce, resides in Watkinsville;

Jeff Bell, President, Bell-Harrison Custom Home Builders, resides in Watkinsville;

David Anglin, Judge of Probate Court, Watkinsville, resides in Watkinsville;

Angela Watson, Clerk of Courts, resides in Watkinsville; and

Bob Smith, Representative for the 91<sup>st</sup> District in Georgia House of Representatives, resides in Watkinsville.

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<sup>5</sup> Works in Watkinsville, resides in Bogart, Georgia (Oconee County).

<sup>6</sup> Works in Watkinsville, resides in Athens, Georgia.

<sup>7</sup> Works in Watkinsville, resides in Bogart.

<sup>8</sup> Works in Watkinsville.

In each case, the persons contacted stated their belief that the residents of the city of Watkinsville consider themselves members of a community that exists and functions separately and independently from Athens-Clarke County.

**(4) Watkinsville Has Its Own Local Government and Elected Officials.**

Watkinsville is listed in the U.S. Census as a town which had a 2000 population of 2,097. Watkinsville is located in Oconee County, Georgia, which had a 1990 population of 17,618. The city of Watkinsville municipal affairs are administered under a Mayor-Council form of government. The mayor and 5 City Council members set government policy and oversee the administrative functions as performed by 13 municipal employees. Watkinsville is the county seat of Oconee County, Georgia. The Watkinsville City Hall provides meeting facilities for up to 210 people.

**(5) Watkinsville Is Included in a Consolidated Telephone Book Provided by BellSouth. Watkinsville Has Its Own Zip Code.**

Watkinsville is included in a consolidated telephone book provided by Bellsouth Corporation. For example, BellSouth Advertising & Publishing Corporation publishes Yellow Pages classified telephone directory for subscribers in Watkinsville which is combined with listings for Athens and Bogart-Statham, Georgia. **Attachment 2** is a copy of the front page of the Yellow Pages where Watkinsville is listed separately from and in the same type face size as Athens and Bogart-Statham. The United States Postal Service recently expanded its facilities in Watkinsville, giving residents a modern, state-of-the-art post office in a new stand-alone facility, with its own ZIP code, 30677.



**(6)           Watkinsville Has Its Own Commercial Establishments and Health Facilities.**

The city of Watkinsville boasts a thriving commercial sector and an active downtown historic district, with nearly 200 licensed businesses. The spiritual needs of the residents of the city of Watkinsville are met by 19 houses of worship, and outlets for social expression are provided by several civic and social organizations. **Attachment 3** is a copy of a list of businesses with licenses issued by the city of Watkinsville. Businesses represented include hair salons, retail stores, auto repair businesses, insurance agencies, real estate agencies, florists, convenience stores, attorneys, a printing company and used automobiles. **Attachment 4** is a list of businesses provided by the Watkinsville Chamber of Commerce that includes banks, schools, a chiropractic physician, restaurants and a supermarket. There is a Regional First Care facility. Truett-McConnell College has a campus at Watkinsville. **Attachment 5** is a list of businesses with Watkinsville addresses which includes physicians and dentists. **Attachment 6** is a list of 24 churches with Watkinsville addresses. **Attachment 7** is a list of 19 civic organizations in Watkinsville or with Watkinsville addresses. SBC urges the Commission to examine the lists of businesses and organizations submitted, as only a summary has been set forth in this paragraph. The Oconee Civic Center in Watkinsville has banquet facilities for over 500 people in addition to an auditorium/theatre complex which seats 500 persons. There is one motel and two bed and breakfasts in Watkinsville. The Norfolk Southern Railway provides freight service to Watkinsville. In addition Watkinsville is served by two U. S. Highways (US 441 and 129) and three state Roads (Georgia Routes 53, 24 and 15).

(7) **Watkinsville Is a Separate Advertising Market.**

Since Watkinsville has no local radio service, its only medium of mass communication is the *Oconee Enterprise* (weekly newspaper) and the *Oconee County Guide*. **Attachment 8** is a copy of an analysis of advertisers in the publications. Sixty-seven percent of the advertisers were from Watkinsville. A total of 75% were from Oconee County. Only 23% came from Athens-Clarke County. This indicates that Watkinsville is its own advertising market.

(8) **The Extent to which Watkinsville Relies on Athens for Municipal Services Such as Police, Fire Protection, Schools, and Libraries.**

Watkinsville is protected on an around-the-clock basis by a fully-staffed police department and a city fire station. Watkinsville has an elementary school, a middle school and a high school. In addition, the city is served by a satellite campus of Truett-McConnell College. The city's physically- and mentally-challenged youths enjoy the facilities of Extra Special People, Incorporated. Watkinsville has a large public library. Watkinsville's recreational facilities include city parks and ball fields. The city's 3,300-square-foot community center seats more than 200 people, and serves as a center for many of Watkinsville's entertainment and cultural activities. The budget (**Attachment 9**) for 2001-2002 is \$782,000 which funds the police department, fire department, municipal court, street department, culture and recreation, parks, library and the downtown streetscape project.

**Summary of Tuck Argument**

As demonstrated herein, Watkinsville possesses the requisite "social, economic and cultural components that are commonly associated with community status." See, FM Table of Allotments (East Hemet, CA), 67 RR 2d 146, 147 (1989). Watkinsville is sufficiently

independent of Athens-Clarke County to justify a first local service preference, and Watkinsville meets the test for independence under the criteria set out in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). In *Lebanon and Hamilton, Ohio and Fort Thomas, Kentucky*, DA 01-2681(MM Docket 01-122-multiple docket proceeding), released November 16, 2001, the Allocations Branch found that the community of Fort Thomas, Kentucky, completely surrounded by the Cincinnati Urbanized Area and approximately 3 miles from downtown Cincinnati was independent of Cincinnati under the traditional *Tuck* analysis. Like Fort Thomas, Watkinsville has an elected mayor and city council that control city services (Factor 1). In addition, the city assesses its own payroll and real estate taxes and has an operating budget of approximately \$782,000 million this year. The city government has employees. It has its own police and fire departments, public works department, and schools (Factor 2). It has over 200 businesses, a health facility and health professionals (Factor 3). It has its own post office and zip code, and is listed in the BellSouth telephone book (Factor 4). It has a local newspaper (Factor 5). Community leaders consider it to be independent; and it has several local civic associations (Factor 6). WXKT would bring first local service to Watkinsville, since Watkinsville currently does not have a local station. Pursuant to *Headland, Alabama, and Chattahoochee, Georgia*, 10 FCC Rcd 10342 (1995) the stations licensed to the Athens Urbanized Area should not be attributed to Watkinsville. See, *Rose Hill, Trenton, Aurora and Ocracoke, North Carolina*, DA 96-2062, released December 13, 1996. Watkinsville warrants a first local service preference.

### **Section 307(b) Analysis**

In determining which proposal will better serve the public interest, the Commission is guided by the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Under priority three, first local service, Watkinsville

warrants a preference for bringing a first local service to Watkinsville over retaining WXKT in Washington as a second local service. Priority three-first local service-outweighs the small loss area of 18,798 persons that would result from the reallocation.<sup>9</sup> Clearly, the reallocation of Channel 261A would result in a preferential arrangement of allotments.

In changing its community of license, WXKT proposes to relocate its transmitter site. The allocation site meets all known constraints. The Engineering Exhibit in the record demonstrates that the 1.0 mV/m contour of WXKT at Washington covers 1477.18 square kilometers, encompassing a population of 11,730 persons. WXKT operating at Watkinsville would cover 2,450.79 square kilometers and 155,056 persons. The *NPRM* shows a loss of 18,769 persons which is more than offset by a gain in service to 130,567 persons. The *NPRM* shows that there would be some small areas with less than five full-time services. Currently, WXKT is off the air, so there will be no real loss of service to the "loss area" identified by the Commission. As noted above, since Washington will continue to enjoy service from WLOV, SBC's proposal will not deprive Washington of its only local transmission service.

Watkinsville would be entirely covered by a 70 dBu or better signal from WXKT. Thus, modification of the license for WXKT would be consistent with the Commission's city-grade contour coverage requirements.

The Commission's priorities for assigning FM allotments are set out in *Revision of FM Assignment Policies and Procedures, supra*. They are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to

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<sup>9</sup> Paragraph 3 of the *NPRM* notes that the predicted loss area has several sections that receive less than five full-time reception services. For example, there is a minuscule area of 117 square kilometers and 618 persons that would receive only one full-time service but this and the other sections noted become *diminimis* when the net gain area from the reallocation of 111,798 persons is considered along with the provision of first local service.

priorities (2) and (3). Here, as noted *supra* first local service to Watkinsville is greatly preferred to retaining two local services to Washington. Thus, there would a preferential arrangement of allotments resulting from the allotment of Channel 261A to Watkinsville.

WHEREFORE, SBC respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

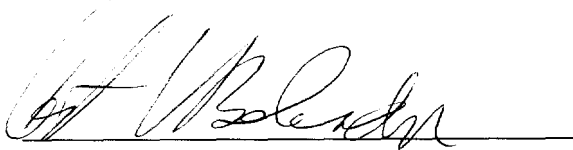
<u>GEORGIA</u>	<u>Present</u>	<u>Proposed</u>
Washington	261A	--- <sup>10</sup>
Watkinsville	---	261A

### **Conclusion**

If the Commission so modifies the license of WXKT, SBC will timely file an application for minor change construction permit to operate WXKT at Watkinsville, and upon grant thereof, SBC will construct the new facilities and operate them.

Respectfully submitted,

**SOUTHERN BROADCASTING COMPANIES, INC.**

By:   
for Gary S. Smithwick  
Its Attorney

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<sup>10</sup> WLOV(AM) is to remain licensed to Washington.

**SMITHWICK & BELENDIUK, P.C.**

5028 Wisconsin Avenue, N.W.

Suite 301

Washington, D.C. 20016

(202) 363-4560

November 26, 2001

**ATTACHMENT 1:**

**Statements Signed by 12 Persons  
Who Work or Reside in Watkinsville**

Declaration of Shannon Adams

I, under penalty of perjury, declare as follows:

I am Shannon Adams, Superintendent of Schools in the Oconee County School District. I am of the opinion that the residents of the city of Watkinsville consider themselves residents of an independent community, unique unto itself and existing apart from Athens-Clarke County.

Executed this 20<sup>th</sup> day of November 2001.

Signed,

*V. Shannon Adams*

Office:  
34 School Street  
Watkinsville GA 30677  
706 769 5130



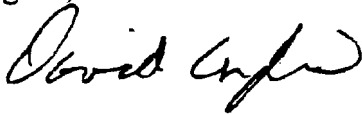
Declaration of David Anglin

I, under penalty of perjury, declare as follows:

I am David Anglin, Judge of the Probate Court in Watkinsville. I have no doubt that the people of Watkinsville view themselves as members of a community that exists separate and apart from Athens-Clarke County.

Executed this 27 day of November 2001.

Signed,

A handwritten signature in cursive script, appearing to read "David Anglin", written in black ink.

**David Anglin**

**Residence:**

**1291 Beechnut Lane  
Watkinsville GA 30677  
706 769 7574**

**Office:**

**23 North Main Street  
Watkinsville GA 30677  
706 769 3936**

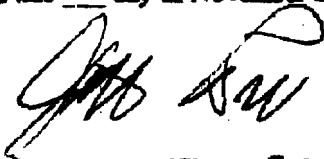
**Declaration of Jeff Bell**

I, under penalty of perjury, declare as follows:

I am Jeff Bell, President of Bell-Harrison Custom Home Builders in Watkinsville Georgia. It is my opinion that the people who live in Watkinsville identify themselves as part a separate and distinct community, and do not consider themselves to be residents of Athens-Clarke County.

Executed this 21 day of November 2001.

Signed,



PRESIDENT BELL - HARRISON CUSTOM HOMES.

**Jeff Bell**

**Residence:**

1570 Colham Ferry Road  
Watkinsville GA 30677  
706 769 3043

**Office:**

530 Court Street  
Watkinsville GA 30677  
706 227 3333

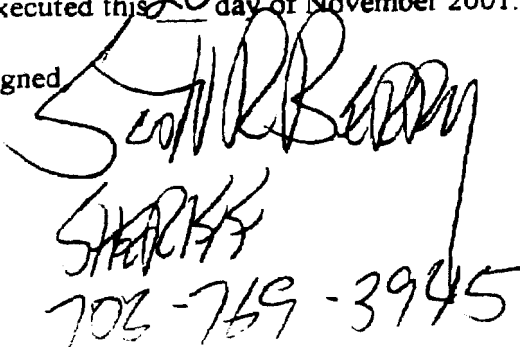
Declaration of Scott Berry

I, under penalty of perjury, declare as follows:

I am Scott Berry, sheriff of Oconee County. It is my opinion that the people of Watkinsville view themselves as members of a community that exists separate and apart from Athens-Clarke County.

Executed this 20 day of November 2001.

Signed

  
SHERRY  
706-769-3945

Scott Berry  
Office:  
1140 Experiment Station Road  
Watkinsville GA 30677  
706 769 5665

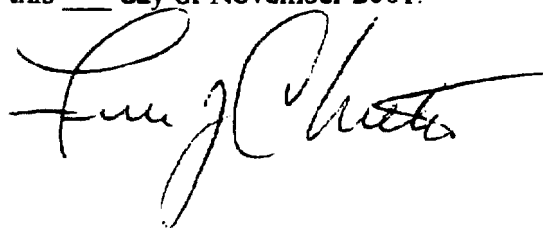
**Declaration of Frank Christa**

I, under penalty of perjury, declare as follows:

I am Frank Christa, President of Athens First Bank in Watkinsville Georgia. While our bank bears the name of our neighboring city, I can say with confidence that the residents of Watkinsville proudly view themselves as members of their own community, separate of and independent from Athens-Clarke County.

Executed this 20 day of November 2001.

Signed,



**Frank Christa**

Residence:

1011 Brookview Place

Athens GA 30606

706 548 0747

Office:

2100 Experiment Station Road

Watkinsville GA 30677

706 357 7000

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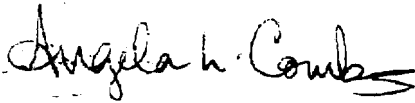
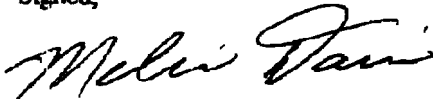
**Declaration of Melvin Davis**

I, under penalty of perjury, declare as follows:

I am Melvin Davis, chairman of the Oconee County Commission. I believe the citizens of Watkinsville regard themselves as members of a community that exists and functions separate and independently from Athens-Clarke County.

Executed this 20 day of November 2001.

Signed,



Notary Public, Athens-Clarke County, Georgia  
My Commission Expires November 2, 2003

**Melvin Davis**

**Residence:**

**1772 Oliver Bridge Road**

**Watkinsville GA 30677**

**706 769 6722**

**Office:**

**23 North Main Street**

**Watkinsville GA**

**706 769 5120**

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SBC provides herein a showing (*Tuck* analysis) that Watkinsville is independent from the Athens-Clarke Urbanized Area. In light of this showing, the stations licensed to other communities within the Athens-Clarke Urbanized area should not be attributed to Watkinsville. Watkinsville warrants a first local service preference.

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SBC provides herein a showing (*Tuck* analysis) that Watkinsville is independent from the Athens-Clarke Urbanized Area. In light of this showing, the stations licensed to other communities within the Athens-Clarke Urbanized area should not be attributed to Watkinsville. Watkinsville warrants a first local service preference.

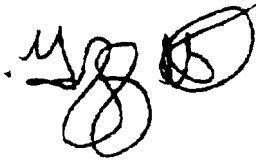
Declaration of Mike Griffith

I, under penalty of perjury, declare as follows:

I am Mike Griffith, President of the Watkinsville-based chain of Golden Pantry convenience stores. It is my firm belief that the people who live in Watkinsville view themselves and their community as being unique, separate, and independent of Athens-Clarke County.

Executed this 25<sup>th</sup> day of November 2001.

Signed,

Michael W. 

**Mike Griffith**  
Residence:  
1400 Hillcrest Drive  
Watkinsville GA 30677  
706 769 6086



**Declaration of Toby Hardigree**

I, under penalty of perjury, declare as follows:

I am Toby Hardigree, Mayor of the City of Watkinsville. It is my opinion that the people of Watkinsville view themselves as members of a community that exists separate of and independent from Athens-Clarke County.

Executed this 20 day of November 2001.

Signed



**Toby Hardigree**  
Residence  
143 New High Shoals Road  
Watkinsville GA 30677  
706 769 7125

Office:  
191 VFW Drive  
Watkinsville GA 30677  
706 769 5161

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PAGE 02

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**Declaration of Russell Lee**

I, under penalty of perjury, declare as follows:

I am Russell Lee, President of the Oconee County Chamber of Commerce. I believe the citizens of Watkinsville regard themselves as members of a community that exists and functions separate and independently from Athens-Clarke County.

Executed this 21<sup>st</sup> day of November 2001.

Signed,



**Russell Lee**

**Residence:**

**1190 Summit Circle**

**Watkinsville 30677**

**706 769 0664**

**Office:**

**706 769 7947**

**55 Nancy Drive**

**Watkinsville GA 30677**

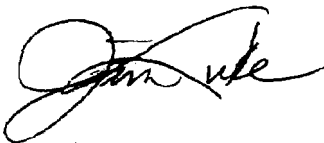
**706 769 7847**

## Statement of Jim Luke

I state as follows:

I am Jim Luke, chairman of the Oconee County Republican Party and owner of Luke Hardware in Watkinsville, Ga. It is my belief that the residents of the City of Watkinsville consider themselves members of a community that exists and functions separately and independently from Athens-Clarke County.

Executed this 21<sup>st</sup> day of November, 2001.



Jim Luke

52 North Main Street  
Watkinsville GA 30677  
706 769 8578